

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALFONSO TENEZACA, NELSON NACIPUCHA,
RENAN ZAMORA-FLORES, and MALVIN
LUNA, on behalf of themselves and others
similarly situated

Plaintiffs,

v.

808 LEX RESTAURANT, LLC d/b/a IL GRADINO
RESTAURANT, TERRENCE LOWENBERG, and
TODD COHEN,

Defendants.

23-cv-08545 (JGLC)

**[PROPOSED] ORDER PRELIMINARILY APPROVING CLASS ACTION
SETTLEMENT AND PROVIDING FOR NOTICE**

WHEREAS, the above-captioned matter (the “Wage Action”) is currently pending before this Court;

WHEREAS, Plaintiffs have made an application, pursuant to Fed. R. Civ. P. 23(e) for an order preliminarily approving the settlement of the claims alleged by the tipped employees in the Lawsuit, in accordance with a Settlement Agreement and Release dated January 20, 2025 (the “Agreement”), which, together with the exhibits annexed thereto, sets forth the terms and conditions for a proposed settlement of the Wage Action against Defendants and for dismissal of the Wage Action against Defendants with prejudice upon the terms and conditions set forth therein, and the Court has read and considered the Agreement and the exhibits thereto; and,

WHEREAS, all terms contained and not otherwise defined herein shall have the same meanings set forth in the Agreement.

**IT IS ON THIS 28 DAY OF February, 2025 HEREBY ORDERED AS
FOLLOWS:**

1. The Court hereby preliminarily approves the settlement set forth in the Agreement as being fair, just, reasonable and in the best interests of the Class.
2. The Court hereby conditionally certifies the settlement class under Fed. R. Civ. P. 23(b)(3) and 29 U.S.C. § 216(b) for purposes of settlement only.
3. The Court hereby appoints Joseph & Kirschenbaum LLP (“JK”) as Class Counsel.
4. The Court hereby approves, as to form and content, the Settlement Notice and finds that the mailing and distribution of the Settlement Notice substantially in the manner and form set forth in the Agreement constitutes the best notice practicable under the circumstances, and constitutes valid, due and sufficient notice to all persons in the Class, complying fully with the requirements of Fed. R. Civ. P. 23, the Constitution of the United States and any other applicable laws.
5. The Court hereby sets a deadline of 60 days from the mailing of the Settlement Notice for Class Members to object to the settlement or opt out of the Class.
6. The Court hereby appoints Rust Consulting as the Settlement Claims Administrator as Rust Consulting was preliminarily identified by the parties as the Settlement Claims Administrator in paragraph 1.4 of the Agreement.
7. The Settlement Fairness Hearing Shall be held before this Court, ~~on~~ at 12:00 pm on June 11, 2025 [at least 100 days after the entry of this Order] at the United States District Court, Southern District of New York, Daniel Patrick Moynihan U.S. Courthouse,
Courtroom 11B
500 Pearl St., at _____, New York, NY 10007, to determine whether the proposed settlement of the Wage Action on the terms and conditions provided for in the Agreement is fair, just, reasonable, adequate and in the best interests of the Class, and should be approved by the Court; whether an Order and Final Judgment of Dismissal, as provided in the Agreement, should be

entered; and to determine the amount, if any, of attorneys' fees and costs, settlement administration costs, and service awards that should be awarded.

8. The Court reserves the right to adjourn the date of the Fairness Hearing without further notice to the Class Members and retains jurisdiction to consider all further applications arising out of or connected with the proposed settlement. Notice of any adjournment can be obtained from Class Counsel: Joseph & Kirschenbaum LLP, 32 Broadway, Suite 601, New York, NY 10004 (phone: 212-688-5640). The Court may approve the settlement, with such modifications as may be agreed to by the settling parties, if appropriate, without further notice to the Class.

9. On or before the date that is seven (7) days before the final approval hearing, Class Counsel shall move the Court for final approval of the settlement and submit a memorandum of law in support of the Class Representatives' application for attorneys' fees and costs, settlement administration costs, and service awards.



Hon. Jessica G. L. Clarke, U.S.D.J.

Dated: February 28, 2025

Class Counsel shall file any timely objections with the Court no later than the filing of the Final Approval Motion. In light of the parties' settlement and the Court's preliminary approval of the class action settlement, the Clerk of Court is directed to terminate ECF Nos. 78 and 109.